NO. 82-71

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

HERBERT A. COCHRANE,

Petitioner,

vs.

KARL N. MARX, RICHARD E. WINAS, MORRIS C. FOYE, III, WILLIAM F. HYLAND and JOHN J. DEGNAN,

Respondents.

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI ON BEHALF OF RESPONDENTS, KARL N. MARX, RICHARD E. WINANS, MORRIS C. FOYE, III, WILLIAM F. HYLAND AND JOHN J. DEGNAN

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TABLE OF CONTENTS

	PAGE
STATEMENT OF THE CASE	1
ARGUMENT—The Court should decline to grant certiorari because petitioner has failed to show that there existed subject matter jurisdiction in the Federal District Court	6
CONCLUSION	9

Cases Cited

Jewell v. City of Covington, 425 F.2d 459 (5th Cir. 1970) cert. den. 400 U.S. 929 S.Ct. 195, 27 L.Ed.2d 189	7
Pan Am Petroleum Corp. v. Superior Court of Del., 366 U.S. 656, 81 S.Ct. 1303, 6 L.Ed2d 584 (1961)	7
Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976)	7
Robertson v. Case, 97 U.S. 646, 24 L.Ed. 1057 (1878)	7

Statute Cited

42 U.S.C. §1983	7

Rule Cited

Federal Rule of Civil Procedure:	
Rule 8(a)(1)	2, 6

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Respondents, Karl N. Marx, Richard E. Winans, Morris C. Foye, III, William F. Hyland and John J. Degnan, respectfully request that the Court deny the Petition for Writ of Certiorari seeking to review the opinion of the United States Court of Appeals for the Third Circuit.

Statement of the Case

This case concerns a dismissal of a complaint by the United States District Court for the District of New Jer-

sey for failure to comply with Rule 8(a)(1) of the Federal Rules of Civil Procedure in that the complaint did not contain "a short and plain statement of the grounds upon which the court's jurisdiction depends." On March 6, 1980 petitioner, an employee of the Greyston Park Psychiatric Hospital, filed a complaint in which he alleged that the defendants conspired to libel and "commit unlawful activities upon him" (Pa4).* Petitioner also charged the defendants with "plunder and spoilation of federal and state funds" (Pa4). The petitioner is employed as a store clerk by the Greystone Park Psychiatric Hospital, a facility operated by the State of New Jersey and once resided in a housing faciilty provided for employees at the hospital.

On or about March 23, 1973 a quarrel occurred between the petitioner and a co-employee of the hospital, Samuel Luvine, in a washroom of the dormitory called Hill Residence in which both were housed. On that occasion heated words were exchanged between the two men resulting in Mr. Luvine's requesting assistance from Wallis Lutz, a fireman on duty in the dormitory (Aa8).**

Despite the intervention of Mr. Lutz, the altercation continued and petitioner struck Samuel Luvine. Shortly thereafter, a complaint against petitioner was made by Samuel Luvine to Frank Neer, the Fire Chief in charge of the dormitory. Mr. Neer reported the incident to defendant Karl Marx who is the business manager at the hospital and petitioner's supervisor. Marx asked Mr. Neer to investigate the incident and submit all data to Marx. Pursuant to this request, an incident report was submitted by

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* Pa refers to the appendix filed by the petitioner with the Petition for a Writ of Certiorari.

** Aa refers to the appendix filed by petitioner with the Third Circuit Court of Appeals.

Messrs. Cochrane, Luvine, Lutz and Joseph Brockman, an assistant Fire Chief who originally received the complaint from Luvine (Aa9).

On April 6, 1973, after consideration of the written and verbal reports of the participants and witnesses to the quarrel, Marx directed a letter to the petitioner which acknowledged the fact that allegations had been made against him concerning the March 23rd incident and provided him with a warning relative to his conduct. The letter urged him to "conduct himself in a manner consistent with the housing rules and regulations" and advised him that repetition of his conduct "could result in serious consideration being given to your being asked to move off the hospital grounds" (Aa9).

On May 12, 1976, another co-employee of the petitioner, Earl Scott, called the police complaining about loud noises coming from the petitioner's room. The police came to the residence and told the petitioner to turn off his radio and to stop making loud noises (Aa10).

On May 18, 1976, Earl Scott filed an incident report with defendant Karl Marx, which complained about the May 14 disturbance. Another co-employee, Alex Homek, filed a grievance report with defendant Marx, in which he sought relief against actions of the petitioner arising out of the disturbance of May 14, 1976 and other incidents. Defendant Marx heard the grievance on May 28, 1976 at which time Mr. Homek and Mr. Scott appeared as witnesses with respect to the incident of May 14, 1976. Mr. Cochrane also testified at the grievance hearing. As a result of the grievance hearing defendant Marx issued a letter of warning to petitioner dated June 22, 1976. This letter urged the petitioner "to exercise great care in your relationship with your co-residents in the Hill Residence." The letter also advised the petitioner that "fail-

ure on your part to heed this warning could result in your being requested to move off hospital grounds" (Aa10).

On April 27, 1977 a petition signed by several residents of Hill Residence was received by defendant Morris C. Foye III who at that time was the Chief Executive Officer of the Greystone Park Psychiatric Hospital. This petition requested that the Cochrane be removed from the residence (Aa10). On May 12, 1977 Roland W. Knowles filed a complaint which alleged that Cochrane threatened Knowles' life in the men's room of the Hill Resident on April 9, 1977. On May 16, 1977 resident Sal LaBrizzi filed an incident report in which he stated he had witnessed a heated discussion between Mr. Knowles and the petitioner during which the petitioner threatened the life of Knowles. On June 6, 1977 defendant Richard E. Winans, who was the Personnel Director of the hospital, directed a letter to the petitioner which informed him that he was required to move from the hospital grounds (Aa10). The petitioner filed a grievance to the June 6, 1977 letter. On June 17, 1977 Winans held a hearing concerning the grievance filed by the petitioner. Winans concluded that ample basis existed for the complaint and that Cochrane should move from the hospital grounds (Aa10).

The factual incidents described above appear to the basis for petitioner's allegation, contained in his complaint, that the defendants conspired "to commit unlawful activities" against the petitioner (Pa6, Pa7). The letters described above concerning petitioner's behavior appear to the basis of his allegations of libel. The complaint also contained allegations that the defendants "plundered federal and state funds allocated for state

owned and operated industries resulting in privation and suffering to millions of the inhabitants" (Pa11) and were "industrial fakers in every sense" (Pa13)*. The complaint also alleged that "jurisdiction is founded in the criminal abuses of judicial processes in New Jersey State courts, being violations of both state and federal law" (Pa3).

On May 16, 1980 United States Magistrate Serena Perretti recommended that the complaint be dismissed because it failed to comply with Rule 8(a)(1) of the Federal Rules of Civil Procedure by failing to show a basis for subject matter jurisdiction (Pa18).

On June 9, 1980, United States District Court Judge H. Curtis Meanor filed an order adopting Magistrate Perretti's report and recommendation and dismissing appellant's complaint (Pa21).

On July 8, 1980 petitioner appealed to the United States Court of Appeals. On February 16, 1982 the Third Circuit Court of Appeals affirmed the judgment of the District Court (Pa23). On March 15, 1982 the Third Circuit denied a petition for a rehearing (Pa25).

On July 14, 1982 a petition for a writ of certiorari was docketed in the Supreme Court of the United States.

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* Named as defendants were petitioner's immediate superior at the hospital, two other officials of the hospital and two former Attorneys General of the State of New Jersey.

ARGUMENT

The Court should decline to grant certiorari because petitioner has failed to show that there existed subject matter jurisdiction in the Federal District Court.

Petitioner's complaint was dismissed by the federal district court because it failed to demonstrate a basis for federal jurisdiction. It neither alleged diversity of citizenship nor was it based on any federal question. Therefore the complaint was properly dismissed for failure to comply with Rule 8(a)(1) of the Federal Rules of Civil Procedure. Petitioner has not shown that the decision of the Third Circuit Court of Appeals in this case conflicts with any other decision of a circuit court of appeals. The decision of the district court to dismiss the complaint is in accord with Rule 8(a)(1) and the accepted and usual course of judicial proceedings. The petition presents no question of federal law which needs to be settled by the Court.

Petitioner has proferred no reason why the Court should examine a routine decision of the federal district court which required him to comply with the Federal Rules of Civil Procedure. Petitioner has merely continued, in papers filed with the Third Circuit Court of Appeals and the Court, to repeat incomprehensible allegations concerning various officials of the State of New Jersey and employees of the District Court. Petitioner's incomprehensible allegations concerning "criminal abuses of judicial process in New Jersey state courts", "looting of public trust funds", "plunder and spoilation of federal and state funds", "industrial due process" and "international common law" (Pa13, Pa4, Pa13) simply do not amount to a substantial constitutional claim. The allegations contained in the complaint filed with the district court and in additional papers filed by petitioner are insubstantial, implausible and incompre-

hensible. They do not indicate any basis for federal jurisdiction. Mere suggestion or bare allegation that a claim is of constitutional dimensions, without more is not sufficient to confer jurisdiction. *Pam Am Petroleum Corp.* v. *Superior Court of Del.*, 366 U.S. 656, 662, 81 S.Ct. 1303, 6 L.Ed.2d 584, 589 (1961); *Jewell* v. *City of Covington*, 425 F.2d 459, 460 ((5th Cir. 1970) *cert.* den 400 U.S. 929, 91 S.Ct. 195, 27 L.Ed.2d 189.

Petitioner has repeatedly disavowed any intention of proceeding pursuant to 42 U.S.C. 1983; rather as noted by Magistrate Perretti he has indicated that he wishes to bring his complaint against state officials only on a personal basis (Pa20). Petitioner has suggested no other basis for federal jurisdiction and his reference in his petition to the Nurenberg trials is inapposite.

Petitioner's complaint contains no allegations showing diversity of citizenship or jurisdictional amount. His listing of federal agencies and their addresses in his petition does not show diversity for those agencies were not named as defendants in his complaint. He now asserts that defendant Winans is a resident of Pennsylvania as he understands it, however he made no such allegation in this complaint and an allegation of residence is insufficient. *Robertson* v. *Case*, 97 U.S. 646, 648, 24 L.Ed. 1057 (1878). The courts below correctly concluded that the complaint was one for libel and was in the nature of a criminal complaint against various state officials. In *Paul* v. *Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976) this court held that alleged defamation by state officials does not state a claim for relief under 42 U.S.C. §1983. In the case *sub judice* petitioner disavows any intention of proceeding under 42 U.S.C. §1983 and makes no claim that the state action violated his constitutional rights. Therefore his as-

sertions are nothing more than claims for defamation under state law. His incredible assertions concerning the operation of the government of the State of New Jersey does not transform his complaints concerning libel into a federal action.

Petitioner's complaint arose from difficulties that developed between him and other residents of state housing facilities which are provided to state employees at a psychiatric hospital run by the State of New Jersey. The disputes concerning proper behavior in a residential facility clearly raises no question of federal law which must be reviewed by the Court. The courts below correctly recognized that petitioner had failed to allege a jurisdictional basis for both his complaint of libel and his incomprehensible assertions regarding state government. His petition for certiorari fails to offer any meritorious argument why the district court and court of appeals were in error. Since petitioner has demonstrated no warrant whatever for the granting of certiorari, his petition should be denied.

CONCLUSION

For these reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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